## **State Legislators against Investor-State**

A Communication from State Legislators from the Following States:

California • Georgia • Illinois • Indiana • Kansas • Maryland • Massachusetts • Maine Minnesota • Missouri • Montana • Nebraska • New Hampshire • North Carolina • Ohio Oregon • Pennsylvania • Tennessee • Utah • Washington • Wisconsin

June 30, 2005

We, the undersigned state legislators, wish to express our grave concern about the Central American Free Trade Agreement's (CAFTA) extension of the expansive investor provisions contained in the North America Free Trade Agreement (NAFTA) to six additional countries.

Over the last eleven years, the closed-door investor-state dispute resolution process contained in NAFTA has allowed corporations to challenge a variety of public interest policies at the state and local level. NAFTA's track record includes challenges to state and local land use decisions, state environmental and public health policies, adverse state court rulings, state and municipal contracts, and the provision of public services as violations of the new privileges conferred on investors by that executive agreement.

CAFTA replicates many of the problems noticed in NAFTA, and alarmingly introduces new ones.

We are especially concerned that under CAFTA, foreign <u>investors would be empowered to bring</u> <u>"regulatory takings" cases not allowed under U.S. domestic law.</u> CAFTA guarantees foreign investors compensation, in the form of cash payments from government treasuries, for any direct or indirect government expropriation or through measures "equivalent" to expropriation. This broad language, like NAFTA's, will continue to generate "regulatory takings" challenges against legitimate state and local environmental, health and safety regulations that impair corporate profitability.

We also find it disturbing that state and local officials would have no standing under CAFTA rules if a state or local measure were challenged. The federal government, as party to the agreement, would be responsible for the defense of laws passed by state legislatures.

All this stands federalism on its head.

Significantly, state and local associations such as the National League of Cities, the National Conference of State Legislatures, the National Association of Attorneys General, the National Association of Towns and Townships, and the Conference of Chief Justices have all objected to the special treatment and investor-state enforcement provided in the NAFTA investor policy model found in CAFTA.

It ought not to go unnoticed that this model for investor provisions carries the potential for significant and lasting detrimental impacts on this country's values in terms of traditional constitutional federalism; it represents nothing less than an assault on finality of state court judgments.

We believe that foreign companies operating on U.S. soil should have no greater substantive or procedural rights than U.S. companies, and that enforcement of trade rules should occur between

governments, not with foreign investors using trade tribunals for private enforcement of intergovernmental executive agreements or treaties.

While we support the idea of mutually beneficial trade that respects the sovereignty of state and local governments, CAFTA clearly fails to meet this standard.

For all of the aforementioned reasons, we urge our congressional delegations to oppose CAFTA.

## **Signatories**

Honorable Liz Figueroa Honorable Thomas George

California Senate Missouri House of Representatives

Honorable Lloyd Levine Honorable Sue Dickenson

California State Assembly Montana House of Representatives

Honorable Nan Grogan Orrock Honorable Jim Elliott Georgia House of Representatives Montana Senate

Honorable Elaine Nekritz Honorable Mike Cooney

Illinois General Assembly Montana Senate

Honorable Timothy Lanane Honorable Don Preister

Indiana Senate Nebraska Senate

Honorable Dale Swenson Honorable Frances Potter

Kansas House of Representatives New Hampshire House of Representatives

Honorable Deborah Hutton Honorable Charles Weed

Maine House of Representatives

New Hampshire House of Representatives

Honorable John Patrick Maine House of Honorable Phillip Frye

Representatives North Carolina House of Representatives

Honorable James Hubbard Honorable Teresa Fedor

Maryland General Assembly Ohio Senate

Honorable James Marzilli Honorable Diane Rosenbaum

Massachusetts House of Representatives Oregon House of Representatives

Honorable John Hottinger Honorable Jackie Dingfelder

Minnesota Senate Oregon House of Representatives

Honorable Aaron Peterson Honorable Mark Cohen

Minnesota House of Representatives

Pennsylvania House of Representatives

Honorable Mike Kernell

Tennessee House of Representatives

Honorable Edward Mayne

**Utah Senate** 

Honorable Maralyn Chase

Washington House of Representatives

Honorable Karen Fraser

Washington Senate

Honorable Terese Berceau

Wisconsin State Assembly

Honorable Spencer Black Wisconsin State Assembly

Honorable Frank Boyle Wisconsin State Assembly

Honorable Roger Breske

Wisconsin Senate

Honorable Dave Hansen

Wisconsin Senate

Honorable Mark Miller Wisconsin State Assembly

Honorable Thomas Nelson

Wisconsin State Assembly

Honorable Mark Pocan

Wisconsin State Assembly

Honorable Judy Robson

Wisconsin Senate

Honorable Michael Sheriden

Wisconsin State Assembly

Honorable Jennifer Shilling

Wisconsin State Assembly

Honorable Robert Turner

Wisconsin State Assembly

Honorable Robert Wirch

Wisconsin Senate

Honorable Josh Zepnick

Wisconsin State Assembly